

Languages and EU law discourse: A view from a bilingual periphery

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This article is a reply to Daniel Thym's post on the "[Solitude of European Law made in Germany](#)".

With a population of five-plus million, with two official languages, Finnish and Swedish, and located far in the north and east in the European Union, the discussion concerning the proper language for publication of legal research particularly in European law – or international law more generally, of which EU law was until EU membership in 1995 seen to constitute a part of – turns easily into a question concerning the ultimate purpose of such research, which is closely linked with the expected audience of such research. From a Finnish perspective, the discussion concerning the language of publication in legal scholarship is a difficult and even slightly sensitive one – after all, the relationship between the law and the language in which it is expressed, is intrinsic. This is nothing typically Finnish, but concerns legal professions and legal scholarship even more generally. There is a long tradition of legal scholarship in the two national languages, Finnish and Swedish, and, at least in Finland, law and legal research have been imaged to belong – in a somewhat national romantic tradition – to the sciences of a distinctively national character, and thus comparable to research in the Finnish language or Finnish history. Especially during the times before the current deep engagement with the transnational, the separation between our “own” legal system and “foreign” elements tended to be emphasised, contributing to a tendency to stress the special features of our own system in comparison with those of others. There has always been plenty of legal literature published both in Finnish and Swedish, and number of active and scholarly high standard peer reviewed journals and reviews continue to be published in Finland, providing fora for scholarly debates – although it is clear that in a small country the number of discussants is always limited. Another significant forum for debates, for example in the fields of constitutional and EU law, is constituted by the committee debates in the Finnish Parliament, which participates closely in the preparation of EU related matters in Finland and hears experts during the course of such discussions.

Despite the existence of legal literature originating in the Finnish context, it is evident that the number of national sources has its obvious limits, and thus research living up to more international standards would be difficult to conduct by relying entirely on purely national sources, slightly depending on one's field of study. Especially general legal doctrines and concepts have been followed and imported intensively, not least because academic dissertations of a good quality have been seen to presume the examination of one's topic from a more theoretical dimension as well. Although publishing in other languages than Finnish or Swedish has traditionally been the exception, scholars have been expected to follow English and German and sometimes even French discussions. In that sense, domestic – often bilingual – research has been international; multilinguistic sources have been used in order to widen the perspective of one's study. Comparative aspects have usually been presented in quite standard legal doctrinal work. The other Nordic countries have always enjoyed a special status, since in particular in civil law the shared elements in the legal systems have been many. For example *Juristföreningen's Tidskrift*, the oldest still published legal journal in the Nordic countries (since 1865), has always had the special ambition of creating a forum for such links in Finland. On the other hand, whatever is written in Spanish or Italian would very seldom or hardly ever be followed. In this context, it is necessary to emphasise the tradition of German in traditional Finnish legal scholarship: There has been a time when the German language and academic connections were considered to be of the highest importance and thus take priority over those to the English speaking world. Interestingly, the leading Finnish legal Zeitschrift, *Lakimies*, now publishing its 112th volume and thus dating back to times before the Finnish independence (1917), has included the titles of the articles published therein in German since 1961, and their summaries in English only since 1995. Both arrangements were motivated during the time of their introduction by the need to open possibilities for others to familiarize themselves with Finnish legal scholarship.

During the early 1990's, the Finnish University law faculties (placed in Helsinki, Turku and the University of Lapland in Rovaniemi, with smaller law departments at other universities) still had a clearly national profile. Young aspirant scholars were advised to publish in Finland and in Finnish, so as not to risk their merits being

lost in translation. Even among the teachers international merits were few, and considered difficult to evaluate or compare with national publications – after all, in Finland everyone would know everyone. The national focus has since then been affected by how very few – if any – areas of law have persisted as being of a clearly national origin after the Finnish EEA and EU membership (in 1995): legal scholarship has needed to adjust as well. A good example of this is criminal law, which has long been treated as the last fortress and an area in which the integrity of the national criminal law system needs to be protected at all cost. This thinking is gradually becoming history, and criminal law scholarship now benefits from number of young criminal law researchers with a focus on the Europeanisation of criminal law, subsequently participating in European debates. The Europeanisation of law in general sets growing demands for legal research to turn more international in its themes and publication channels, which also contributes to the increasing the visibility of Finnish legal scholarship. On the other hand, there are also demands for a continued focus on research in the Finnish context, which remains to have direct societal benefits and impact. At the same time, research cannot remain blind to the realities of new legal frameworks where European elements play an increasing role. The engagement with the transnational and the European entails in practice that significant parts of the legal research relevant to your own legal order including its European ingredients are no longer conducted in your own language. While an important part of your primary sources, such as case law or legislation, will be available in translations, even a proper textual analysis presumes the knowledge of different languages.

It is common to state that English has become the modern *lingua franca* of science. Despite a growing internationalization, the trend nowadays seems to be specifically towards a more dominant use of English materials. For example, the number of those scholars who would master German is declining. In many fields of science, mastering scientific English is a precondition for gaining access to relevant information, publications – and international recognition. But although English enjoys a universal position, it would seem that scholars continue to publish in other languages, in particular their native languages, especially in the field of social sciences and humanities. Looking at this development from Finland, English seems now to be the dominant language for the science of European law, too. Nevertheless, this is not to say that there would not be European law science beyond the English. Much of the relevant research in European law is still published in national languages in national journals, and aimed at national audiences. The fact that such publication channels continue to exist is of course important, but at the same time the results of such research risk to be ignored simply because important knowledge might be shut in rather closed circles. Keeping in mind the close relationship between law, legal research and culture, a situation where the European legal elites would discuss and publish legal research only in one language and in international fora could risk research being increasingly isolated from everyday societal debates and develop the results of such studies into being something for a closed epistemic community.

There is no doubt that if we wish to take part in the formulation of the common legal space of the European Union in any relevant way, the exercise cannot be successively done by using the Finnish or Swedish languages. Typically, researchers go for impact; impact on other research, other legal practices along legal research, notably in the legislative, administrative and judicial branches. And the very idea of research includes the element of sharing – and sharing your results is easier if you are understood. Being strategic and thinking of the audience of your results and those with whom you wish to have your scientific discussion or where you would like to see your research acknowledged naturally affects your choice of language. For example, there is interesting research data concerning the journals that are read in the European Court of Justice^[1] – and Finnish journals irrespective of their quality cannot be expected to figure very high on this list. At the same time, the choice of different audiences and the purposes of publication leave plenty of space even for some serious European law scholarship in Finnish or Swedish, particularly when justified with the legal dogmatic interest of knowledge needed for typical intra-national situations. However, the same choices set demands for publishing in widely used languages too. In order to take part in the relevant discussions you need to go for two publication channels in parallel: national discourse and communication in foreign languages. The internationalization and Europeanisation have thus entailed a rather dramatic change in Finnish legal research in this respect during the last 20 years. In addition, there is a demand for materials in foreign languages concerning internal matters but to be used for comparative purposes.

Paradoxically, language is not only a bridge between individuals and peoples, but often acts as barriers of

communication in cases when no common language exists. For a Finn wishing to take part in scholarly discussions in European fora concerning matters relating to EU law, Finnish or Swedish is not – and has never been – an alternative.

[1]H. Bouthinon-Dumas and A. Masson, Quelles sont les revues juridiques qui comptent à la Cour de justice de l'Union européenne?, *Revue Trimestrielle de Droit Européen* (2013), at 781.

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